TABLE OF CONTENTS

SH 2447480

AUDIO VIDEO TRACKING SHEET

OFFICER INVOLVED SHOOTING FORM

INVESTIGATIVE SUMMARY

INTERVIEW TRANSCRIPTS

Involved Deputy Elsa Buonarigo - Homicide

Involved Deputy Elsa Buonarigo - IAB

Witness Deputy Gerrardo Cruz – Homicide

Witness Deputy Gerrardo Cruz - IAB

Witness Deputy Gabriela Murillo

Witness Deputy Ethan Lizarraga

Suspect Michael Lombardi - Homicide

EXHIBITS

A **One (1) DVD-R disc containing Homicide Investigation Case Book URN # 018-02881-1348-145**

B **One (1) DVD-R disc containing Surveillance Video from 7 Leaves Café, AM/PM Arco, and [redacted] Ibex Avenue, Radio Traffic, and Photographs**

C **Photograph of kitchen knife and plastic baggie containing methamphetamine**

D **Los Angeles County Sheriff's Department Scientific Services Bureau Laboratory Report dated February 7, 2018, Lab Receipt L044733**

E **Justice System Integrity Division (JSID) of the Los Angeles County District Attorney's Office Letter of Opinion, Dated February 13, 2019, JSID File #18-0074**

F **Los Angeles County Sheriff's Department Scientific Services Bureau Crime Scene Investigation Report, dated February 6, 2018, report issued by Forensic Identification Specialist II, Donna Thomas, #[redacted]**

G **Los Angeles County Sheriff's Department Scientific Services Bureau Crime Scene Investigation Report, dated February 13, 2018, report issued by Senior Criminalist, Manuel Munoz, #[redacted]**

H **Los Angeles County District Attorney's Office Charge Evaluation Worksheet, dated May 9, 2018, Da Case No. 38565076**

I **Google Maps image of the intersection of Norwalk Boulevard and Artesia Boulevard with Deputy Buonarigo's last name, employee number and date written on it**

J **Three (3) scene photographs containing images of Los Angeles County Sheriff's Department patrol vehicles with Deputy Buonarigo's last name, employee number and date written on it**

K **Google Maps image of the intersection of Norwalk Boulevard and Artesia Boulevard with Deputy Cruz' last name, employee number and date written on it**

L **One (1) scene photograph containing images of Los Angeles County Sheriff's Department patrol vehicles with Deputy Cruz' last name, employee number and date written on it**

MISCELLANEOUS DOCUMENTS

Lakewood Station in-service, PM shift February 4, 2018

Lakewood Station in-service, EM shift February 5, 2018

Los Angeles County Consolidated Criminal History Reporting System Criminal History Transcript for Suspect Lombardi

Los Angeles County Sheriff's Department Scientific Services Bureau Laboratory Examination Report, examination and function test on Deputy Buonarigo's firearm, dated February 13, 2018, report issued by Manuel Munoz, #[redacted]

Close up photograph of kitchen knife pictured in **[Exhibit C]** with Deputy Buonarigo's last name, employee number and date written on it

Photograph **[Exhibit C]** of kitchen knife and plastic baggie containing suspected methamphetamine with Deputy Cruz' last name, employee number and date written on it

Photograph **[Exhibit C]** of kitchen knife and plastic baggie containing suspected methamphetamine with Deputy Murillo's last name, employee number and date written on it

Photograph **[Exhibit C]** of kitchen knife and plastic baggie containing suspected methamphetamine with Deputy Lizarraga's last name, employee number and date written on it

One U.S. Postal Service's (USPS) Return Domestic Receipt for Suspect Michael Lombardi and USPS tracking record, Tracking Number: 70190700001331891484

Deputy Elsa Buonarigo's training records

Deputy Elsa Buonarigo's firearm qualification records

Standard Weapons and Course Codes

Administrative Rights Force/Shooting Investigation signed by Deputies Elsa Buonarigo, Gerrardo Cruz, Gabriela Murillo, and Ethan Lizarraga



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
JOSEPH P. ESPOSITO • Chief Deputy District Attorney
VICTORIA L. ADAMS • Assistant District Attorney

SCOTT K. GOODWIN • Director

February 13, 2019

Captain Kent Wegener
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Michael Lombardi
J.S.I.D. File #18-0074
L.A.S.D. File #018-02881-1348-145

Dear Captain Wegener:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 5, 2018, non-fatal shooting of Michael Lombardi by a member of the Los Angeles County Sheriff's Department. Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

By

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Elsa Buonarigo, #[redacted]

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MEMORANDUM

TO: CAPTAIN KENT WEGENER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Michael Lombardi
J.S.I.D. File #18-0074
L.A.S.D. File #018-02881-1348-145

DATE: February 13, 2019

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 5, 2018, non-fatal shooting of Michael Lombardi by Los Angeles County Sheriff's Department (LASD) Deputy Elsa Buonarigo. It is our conclusion that there is insufficient evidence to prove beyond a reasonable doubt that Deputy Buonarigo did not act in lawful self-defense.

The District Attorney's Command Center was notified of the shooting on February 5, 2018, at approximately 1:39 a.m. The District Attorney Response Team responded and was given a briefing and a walk-through of the scene.

The following analysis is based on reports submitted to this office by Sergeants John O'Brien and Domenick Recchia, LASD, Homicide Bureau. Deputy Buonarigo provided a voluntary statement which was considered as part of this analysis.

FACTUAL ANALYSIS

Statement of Deputy Elsa Buonarigo

On February 5, 2018, at approximately 12:00 a.m., Buonarigo was working uniformed patrol in a marked black and white patrol vehicle when she observed Michael Lombardi standing in the road at the southwest corner of Artesia Boulevard and Norwalk Boulevard in the City of Artesia. Lombardi was holding a water bottle containing a yellowish liquid while spinning around in the street near the south curb of Artesia Boulevard. Lombardi had a shaved head and was wearing baggy clothing and appeared to Buonarigo to be a gang member. Due to Lombardi's bizarre behavior, appearance and the fact that there had been recent gang-related shootings in the area, Buonarigo decided to contact him. Buonarigo turned on her patrol vehicle's lights and stopped next to Lombardi.

Lombardi looked toward Buonarigo and immediately put his hands into his pants pockets. Buonarigo exited the patrol car and told Lombardi to take his hands out of his pockets. Lombardi replied, "No! Fuck you!" and began to walk away from Buonarigo. Buonarigo again ordered Lombardi to remove his hands from his pockets. Lombardi shoved his hands deeper into his pockets and removed a glass narcotic pipe and slammed it to the ground. Lombardi said, "Fuck you! You can't do anything!" and continued to walk away. Buonarigo ordered Lombardi to return to her location. Lombardi ignored her and crossed Artesia Boulevard to the northwest corner. Buonarigo requested additional units to respond to her location.

Buonarigo lost sight of Lombardi when she momentarily focused on traffic. Buonarigo made a U-turn and traveled west on Artesia Boulevard searching for Lombardi. The north sidewalk of Artesia Boulevard is dark and bordered by a brick wall. Due to the recent shootings in the area, the fact that Lombardi appeared to be a gang member and that he continued to evade her after tossing the narcotic pipe, Buonarigo was concerned for her safety and decided to wait for back up to arrive before recontacting Lombardi.

LASD Deputy Gerardo Cruz arrived and Buonarigo relayed her interaction with Lombardi to him. As she was talking to Cruz, Buonarigo observed Lombardi walking west on the north sidewalk of Artesia Boulevard. Buonarigo pointed out Lombardi to Cruz. Cruz drove west in the eastbound lanes of Artesia Boulevard, while Buonarigo drove west in the westbound lanes. Buonarigo turned on her lights and siren. As Buonarigo approached Lombardi from behind, she observed his hands were still in his pants pockets. Buonarigo ordered Lombardi to stop. Lombardi shouted something and continued walking.

Buonarigo observed that Cruz had made a U-turn and was approaching her location from the west. Buonarigo stopped and exited the patrol car and used the open door for cover. Buonarigo was facing north toward Lombardi and illuminated him with the vehicle's spotlight. Buonarigo again ordered Lombardi to stop and pointed her service weapon toward him. Buonarigo also heard Cruz yell "Stop!" at Lombardi. Lombardi replied, "Fuck you!" and turned toward her with his hands still in his pockets. Buonarigo repeatedly yelled, "Let me see your hands!" Lombardi again shouted, "Fuck you!" and stepped into the street, moving toward Buonarigo in an aggressive manner. Lombardi's left hand was now holding his pants while he shoved his right hand down into his waistband.

Lombardi continued to advance toward Buonarigo. Buonarigo feared that Lombardi was about to pull a gun from his pants and shoot her. Lombardi ignored orders to stop and advanced to within four to five feet of Buonarigo and began to remove his right hand from his waistband. In fear for her life, Buonarigo fired one round at Lombardi. Lombardi stopped, yelled something then dropped to his knees. Buonarigo approached Lombardi and grabbed his wrists and handcuffed him. Cruz broadcast that there was an accidental discharge. Buonarigo corrected Cruz and told him that she intentionally fired at Lombardi. Buonarigo did not see where the round struck, but aimed toward center mass when she fired.

Statement of Deputy Gerardo Cruz

Cruz responded to Buonarigo's request for assistance. Cruz met Buonarigo at the southwest corner of Artesia Boulevard and Norwalk Boulevard. Buonarigo advised him that she observed

Lombardi standing in the street with his hands in his pockets. He appeared to be a possible gang member. Lombardi grabbed something from his pocket and threw it to the ground. Lombardi then fled. Buonarigo pointed toward the north sidewalk, west of their location. Cruz observed Lombardi walking west on the sidewalk. Buonarigo told him that was the person who had fled from her.

Cruz drove westbound in the eastbound lanes and passed Lombardi.[1] Lombardi was walking westbound on the sidewalk at a fast pace. The area was dark and his hands were either in his pockets or at his waist. His shirt hung over his waistband. Cruz made a U-turn and drove east along the north sidewalk in the westbound lanes. Cruz saw Buonarigo approaching from the opposite direction. Buonarigo stopped five to seven feet behind Lombardi. Cruz stopped his patrol car approximately 20 feet in front of Lombardi. Cruz could not see Lombardi's right hand from his position, but his left hand was near his pants pocket, close to his body.

Buonarigo exited her patrol car. Cruz exited his vehicle and walked to the front passenger side and drew his service weapon. Buonarigo was ordering Lombardi to stop. Lombardi turned toward Buonarigo and responded angrily, but continued walking westbound. Lombardi suddenly turned toward Buonarigo and walked onto the grass parkway. Cruz ordered Lombardi to stop and show his hands. Buonarigo was also giving him commands. Lombardi ignored the commands and continued to say something in an angry tone and stepped into the street in front of Buonarigo's vehicle. Cruz could no longer see Lombardi's left hand and thought that he may be using it to remove a weapon from his pocket or beneath his shirt. Lombardi's right hand was clutched between his pants and shirt. Cruz believed that Lombardi was going to assault Buonarigo. Cruz did not fire his weapon because Buonarigo was in his line of fire. Shortly thereafter, Cruz heard a "pop."

Initially, Cruz did not believe that Lombardi had been struck by gunfire. Lombardi did not complain of pain, Cruz did not see any blood and Lombardi remained standing. A few seconds later, Lombardi dropped to his knees then lay face down in the street. Cruz believed Lombardi was complying with Buonarigo's commands. Buonarigo approached Lombardi and handcuffed him. At that time, Cruz broadcast that Buonarigo had accidentally discharged her weapon. Cruz then realized that if Buonarigo's shot missed Lombardi it was considered a "non-hit deputy involved shooting" and not an accidental discharge. Cruz updated his broadcast to "shots fired."

Gunshot Wound

Lombardi was transported to Long Beach Memorial Hospital and treated for a through and through gunshot wound. The bullet entered Lombardi's left lower flank and traveled upward in a left to right direction. The bullet exited his right flank.

Additional Evidence

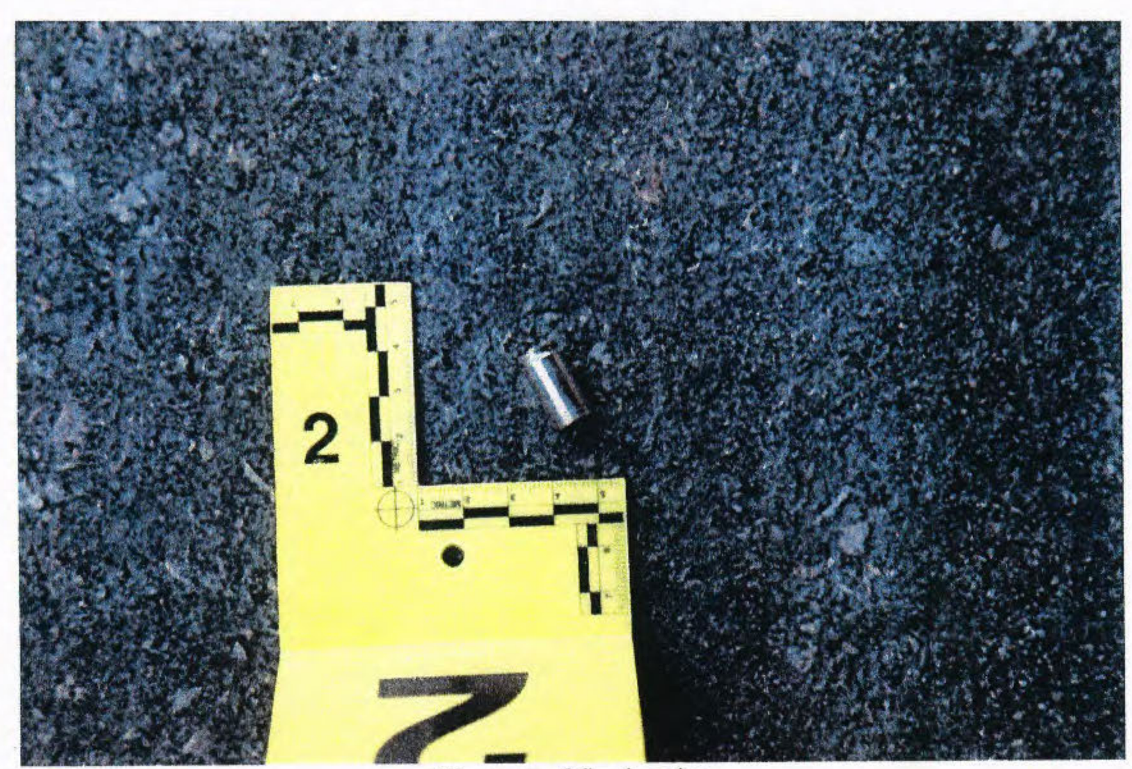
A steak knife was recovered from Lombardi's left sock and a baggie of methamphetamine was recovered in his pants pocket. Lombardi was not armed with a firearm.

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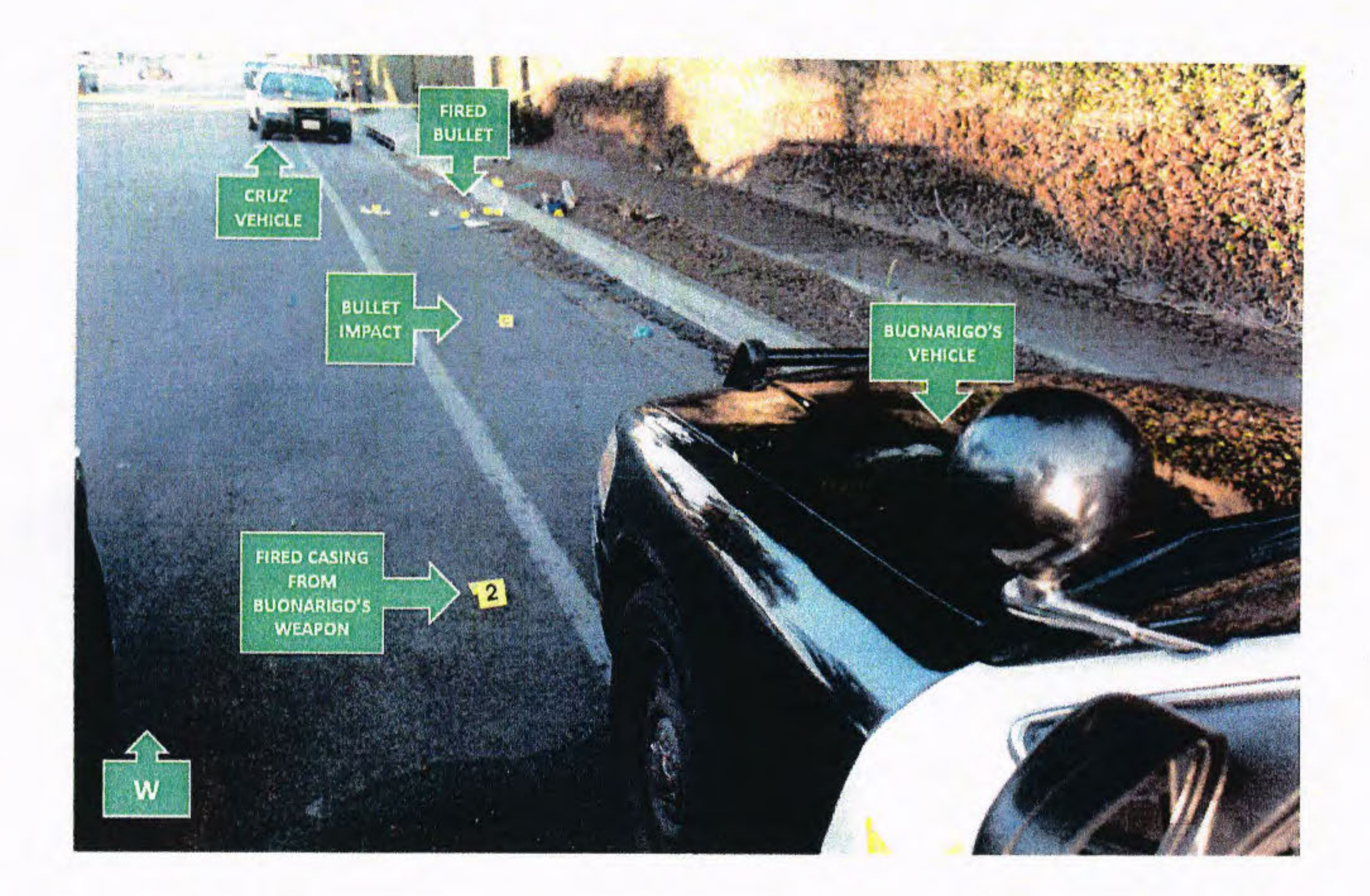
[1] A traffic island impeded his ability to cross into the westbound lanes where Lombardi was walking. Cruz had to travel further west until he reached a turn pocket.



Close up of fired bullet



Close up of fired casing



LEGAL ANALYSIS

The use of deadly force in self-defense or in defense of another is justifiable if the person claiming the right actually and reasonably believed the following: (1) that he or the person he was defending was in imminent danger of being killed or suffering great bodily injury; (2) that the immediate use of force was necessary to defend against that danger; and (3) that he used no more force than was reasonably necessary to defend against that danger. See, *CALCRIM No. 505.*

"The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation." *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

In *Graham*, the United States Supreme Court held that the reasonableness of the force used "requires careful attention to the facts and circumstances of each particular case...Thus we must avoid substituting our personal notions of proper police procedures for the instantaneous decision of the officer at the scene. We must never allow the theoretical, sanitized world of our imagination to replace the dangerous and complex world that policemen face every day. What constitutes 'reasonable' action may seem quite different to someone facing a possible assailant than to someone analyzing the question at leisure." *Smith v. Freland* (6th Cir. 1992) 954 F.2d 343, 347.

The People have the burden of proving beyond a reasonable doubt that the use of self-defense was not justified. See, *CALCRIM No. 505.*

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code section 835a. An officer "may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him." *People v. Mehserle* (2012) 206 Cal.App.4th 1125, 1146.

Actual danger is not necessary to justify the use of force in self-defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon these circumstances. The right to self defense is the same whether the danger is real or apparent. *People v. Toledo* (1948) 85 Cal.App.2d 577, 580.

"If the defendant acted from reasonable and honest convictions he cannot be held criminally responsible for a mistake in the actual extent of the danger, when other reasonable men would alike have been mistaken." *People v. Jackson* (1965) 233 Cal.App.2d 639, 642.

"An officer is not constitutionally required to wait until he sets eyes upon the weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun." *Thompson v. Hubbard* (2001) 257 F.3d 896, 899. See *Ryder v. City of Topeka* (1987) 814 F.2d 1412, 1419 (concluding that, because a requirement that a suspect actually have a weapon would place police in "a dangerous and unreasonable situation … whether a particular seizure is reasonable is dependent on the 'totality of circumstances,' and not simply on whether the suspect was actually armed.")

Before you may rely on circumstantial evidence to find a defendant guilty, you must be convinced that the only reasonable conclusion supported by the circumstantial evidence is that the defendant is guilty. If you can draw two or more reasonable conclusions from the circumstantial evidence, and one of those reasonable conclusions points to innocence and another to guilt, you must accept the one that points to innocence. *However, when considering circumstantial evidence, you must accept only reasonable conclusions and reject any that are unreasonable.* [emphasis added] See CALCRIM No. 224

CONCLUSION

The evidence examined shows that Lombardi was not armed with a firearm when he was shot by Buonarigo. The law does not require actual danger to justify the use of deadly force in self-defense. Instead, if a person "is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury," they may use deadly force in self-defense. The question, therefore, is not whether Lombardi was actually armed at the time of the shooting. The issue is whether it was reasonable under the circumstances for Buonarigo to believe that Lombardi was pulling a firearm from his pants when she fired her weapon.

Buonarigo indicated that there had been recent gang-related shootings in the area and Lombardi wore baggy clothing and had a shaved head and appeared to Buonarigo to be a gang member. Lombardi continuously kept his hands in his pockets and waistband area during his contact with Buonarigo. He ignored multiple commands to remove his hands. It is common for criminals to conceal firearms in their pants pocket or waistband area. Lombardi kept his hands in his pockets after discarding an illegal narcotics pipe. He also walked away from Buonarigo after tossing the pipe. Based on the fact that Lombardi continued to evade the deputy with his hands in his pockets, as well as his appearance and the location, it was reasonable under the circumstances to believe that Lombardi was concealing additional contraband and that it was a firearm.

Lombardi ignored Buonarigo's orders to stop when she contacted him walking on the north sidewalk of Artesia Boulevard. His hands were still in his pockets and he ignored multiple orders to stop. Lombardi suddenly turned toward Buonarigo and angrily shouted "Fuck you!" several times. He walked into the street and advanced to within five feet of the deputy while shoving his right hand into his pants. Lombardi ignored Buonarigo and Cruz' additional orders to stop. Based on Lombardi's aggressive demeanor and behavior, his refusal to show his hands, coupled with closing the distance to Buonarigo with his hands in his pants, it was reasonable to believe that Lombardi was arming himself with a firearm. Cruz also believed that Lombardi was arming himself, however, Buonarigo was in his line of fire and he could not discharge his weapon. Buonarigo fired her weapon when Lombardi began to remove his hand from his pants, believing that he was about to shoot her. Lombardi's actions placed Buonarigo in reasonable fear for her life and she responded with reasonable deadly force. The ballistic evidence shows that the one round fired by Buonarigo struck the roadway before ricocheting into Lombardi. The upward path of Lombardi's gunshot wound is consistent with a ricocheting round. The fact that the round struck the road first, may also explain Cruz' initial belief that there was an accidental discharge.

We conclude that the People cannot prove beyond a reasonable doubt that Deputy Elsa Buonarigo did not act in lawful self-defense when she used deadly force against Michael Lombardi. We are therefore closing our file and will take no further action in this matter.